

REMARKS

Claims 1-4, 6-8 and 10 remain pending in the present application.

In the Restriction Requirement of June 30, 2005, the Examiner required Applicants to elect one of either Group I, consisting of claims 1, 3, 4 and 6, or Group II, consisting of claims 2, 7, 8 and 10. Applicants respectfully submit that the Restriction Requirement is inappropriate, and respectfully request withdrawal thereof.

Section 803 of the M.P.E.P. provides that a requirement for restriction between patentably distinct inventions is proper only if there would be a serious burden on the Examiner to examine all of the claims. Applicants respectfully submit that there would not be a serious burden on the Examiner to examine all of the claims of the present invention.

Section 803 of the M.P.E.P. provides that for purposes of the initial requirement, a serious burden on the Examiner may be prima facie shown if the Examiner shows by appropriate explanation of separate classification, separate status in the art, or a different field of search. Section 803 also provides that the prima facie showing may be rebutted by appropriate showings or evidence by the Applicants.

In the Restriction Requirement, the Examiner asserted that the claims of Group I are drawn to a connector classified in class 606, subclass 61, and that the claims of Group II are drawn to a connector classified in class 403, subclass 52.

However, Applicants submit that all of the pending claims are drawn to a rod connector, and that it would be appropriate to classify each of the pending claims in either class 606, subclass 61 (containing spinal positioners or stabilizers), or class 403,

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subclass 52 (containing joint connectors having articulated members). Thus, Applicants respectfully submit that the inventions of Groups I and II do not have a separate classification, separate status in the art, or a different field of search.

Furthermore, the Examiner would not be required to examine a large amount of claims were he to examine all of the pending claims, as only eight claims are pending, two of which are independent.

Finally, Applicants submit that it is inappropriate for the Examiner to assert at the present stage of prosecution that there would be a serious burden for him to examine each of claims 1-4, 6-8 and 10 since he has already conducted a search and examined all the pending claims in this application, as evidenced by the action on the merits mailed on November 16, 2004. Applicants submit that it is inappropriate to issue an Office Action in which all the claims are examined, and subsequently issue a Restriction Requirement with respect to those examined claims.

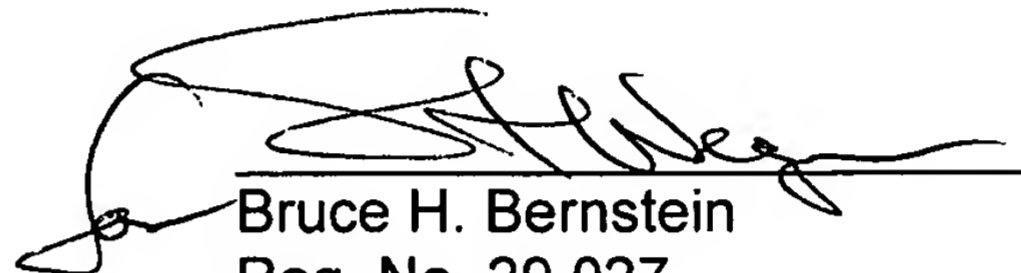
For at least these reasons, Applicants respectfully submit that the Examiner's Restriction Requirement is improper, and request withdrawal of the requirement.

Nevertheless, in order to be fully responsive, Applicants have elected Group I with traverse, in the event that the Examiner chooses not to reconsider and withdraw the Restriction Requirement.

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Should the Examiner have any questions or comments regarding this response, or the present application, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully submitted,
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